

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 25 of 2004.

Date of Decision: 26.10.2007

United India Insurance Co.

... Appellant

Versus

Yoginder Singh Verma & ors.

... Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellant (s) : Mr. Sanjiv Kuthiala, Advocate.

For the Respondent(s) : Mr. N.K.Thakur, Advocate vice
Mr. Jagdish Thakur, Advocate,
for respondents 1 & 2.

Mr. Arun Kumar, Advocate vice
Mr. Ajay Sharma, Advocate, for
Respondents 3 & 4.

Deepak Gupta, J (Oral).

This appeal by the Insurance Company is directed against the award of the learned Motor Accident Claims Tribunal, Hamirpur in MAC Petition No. 50 of 2001, decided on 22.11.2003, whereby it has held the Insurance Company liable to reimburse the insured for the amount of compensation awarded.

The two grounds raised by the Insurance Company both before the learned Tribunal and before this Court are as follows:

- i) that the owner did not have proper documents of the vehicle i.e. registration certificate, fitness certificate, route permit etc.;
- ii) that the driver of the vehicle did not have a valid driving licence.

As far as the first argument is concerned, the owner while appearing in the witness box has produced fitness certificate and the registration certificate. No doubt, route permit has not been produced by the owner but the Insurance Company has not led any evidence to show that the vehicle did not have a route permit. Furthermore, the absence of route permit by itself does not absolve the Insurance Company from its liability unless it is shown that the use of vehicle in contravention of the route permit has in any way contributed to the accident.

With regard to the next contention of the Insurance company that the driver of the vehicle did not have a valid driving licence, the Insurance company has placed reliance on documents Ex.R5 to Ex.R8, which have been tendered in evidence. These documents have not been properly proved. Ex.R5 is a photo copy of the communication sent by Shri P.S.Grover to the Insurance Company that licence No. 1037/91-92 of Mr. Ravinder Kumar has never been issued from the office of DTO, Amritsar. To the similar effect is Ex.R6, a photo copy of communication dated 10.2.1999 of Shri P.S.Grover. Another communication Ex.R7 is a photo copy of the letter sent to the District Transport Office, Hoshiarpur by Col. Diwan Chand for verification of the driving licence No. 7947/R/94-95. This has been ostensibly returned with the remarks that no such

licence has been issued by the said office. Ex.R8 is a photo copy of the judgment said to have been passed by the District Consumer Forum, Hoshiarpur. None of these documents have been properly proved. Neither Shri Grover nor Col. Diwan Chand was examined to prove the documents. No effort has been made to summon the concerned official from the office of DTO, Amritsar or DTO Hoshiarpur to the effect whether the licence issued to Ravinder Kumar was valid or not. Photo copies of the communications sent by the investigator/surveyor appointed by the Insurance Company cannot be proved without producing the original and examining the concerned surveyors. Furthermore, the fact whether a licence was issued or not can only be proved by examining the concerned licencing authority. Ex.R8 is only a photo copy of the order of the Consumer Forum. It is not a certified copy of the order of the Consumer Forum. In any event, an order of the Consumer Forum does not bind the Motor Accident Claims Tribunal who is required to decide the matter on the basis of evidence led before it. The owner during the course of his statement has produced a copy of the driving licence (Ex.R3) of the driver which shows that it was issued by the DTO, Hoshiarpur and it is a renewal of an old licence which was renewed virtually for all types of vehicles w.e.f.6.3.1997 to 5.3.2001 and from 30.5.2001 to 29.5.2004. Despite copy of this licence having been produced on record, the Insurance Company did not take any steps to summon any evidence from the office of the DTO Hoshiapup to challenge the correctness or validity of such licence.

Keeping in view the aforesaid facts, I find that the Insurance Company has failed to prove that the driver did not have a valid licence. There is no merit in this appeal which is dismissed with no order as to costs.

October 26, 2007.

(Deepak Gupta), J.

s.